

MAR 10 1992

This is in response to your inquiry concerning the application of §213(a)(3) of the Fair Labor Standards Act (FLSA) to certain employees of the (the Center). We regret the delay in responding to your inquiry.

You state that the Center is a nonprofit corporation and consists of a 33,335 acre property dedicated to recreational and educational activities relating to marksmanship. The Center is a permanent facility that consists of a visitors' center, administrative offices, and, presumably, rifle and other shooting ranges for marksmanship and training purposes. The Center is staffed by full-time employees on a year-round basis. You state that such employees are paid in accordance with the minimum wage and overtime pay requirements of the FLSA.

In addition to year-round activities, the Center conducts marksmanship competitions (lasting three to five days) during a six month period from May through October that constitute an integral part of the Center's operations. The Center and its marksmanship competitions are open to the general public. Individuals (either "volunteers" or seasonal employees) assist the Center's permanent staff in providing services necessary for the marksmanship competitions. You wish to know whether the §213(a)(3) exemption could be applied to these individuals.

Section 213(a)(3) provides a minimum wage and overtime pay exemption for "any employee employed by an establishment which is an amusement or recreational establishment, organized camp, or religious or non-profit educational conference center, if (A) it does not operate for more than seven months in any calendar year, or (B) during the preceding calendar year, its average receipts for any six months of such year were not more than 33 1/3 per centum of its average receipts for the other six months of such year...."

Amusement or recreational establishments, as used in §213(a)(3), are establishments frequented by the public for its amusement or recreation and which are open for seven months or less a year (or which meet the seasonal receipts test in clause (B) of the

exemption). As used in the FLSA, the term "establishment" refers to a distinct physical place of business. See §779.23 of 29 CFR Part 779. Based upon your description, the Center is the establishment for FLSA purposes, and its marksmanship competitions cannot be considered to be separate and distinct establishments for FLSA purposes. Thus, we conclude that the test in §213(a)(3)(A) cannot be met by the Center, since it operates on a year-round basis.

Since you have not provided any information concerning receipts, we cannot determine if §213(a)(3)(B) could apply to the Center. If receipts from sales made or business done by the Center in any six months of the calendar year 1991 constituted 75 percent of the business done by the Center in that year, the exemption would be applicable in 1992, and so forth.

Our position with respect to volunteer services under the FLSA is discussed in the enclosed publication "Employment Relationship Under the Fair Labor Standards Act." Employees of the Center may not volunteer services to the Center during the marksmanship competitions, or at any other time, without compensation in accordance with the FLSA (assuming they are otherwise covered and nonexempt).

We trust that the above is responsive to your inquiry.

Sincerely,

Daniel F. Sweeney
Deputy Assistant Administrator

Enclosure